

disproportionate (i.e., whether there is a lack of proportion or relation between the two);

(3) What steps the parties have taken to determine the actual cost of relocation to comparable facilities;

(4) Whether either party has withheld information requested by the other party that is necessary to estimate relocation costs or to facilitate the relocation process.

(c) Any party alleging a violation of our good faith requirement must attach an independent estimate of the relocation costs in question to any documentation filed with the Commission in support of its claim. An independent cost estimate must include a specification for the comparable facility and a statement of the costs associated with providing that facility to the incumbent licensee.

(d) Negotiations will commence when the FSS licensee informs the FS licensee in writing of its desire to negotiate. Negotiations will be conducted with the goal of providing the FS licensee with comparable facilities, defined as facilities possessing the following characteristics:

(1) *Throughput.* Communications throughput is the amount of information transferred within a system in a given amount of time. If analog facilities are being replaced with analog, the FSS licensee is required to provide the FS licensee with an equivalent number of 4 kHz voice channels. If digital facilities are being replaced with digital, the FSS licensee must provide the FS licensee with equivalent data loading bits per second (bps). FSS licensees must provide FS licensees with enough throughput to satisfy the FS licensee's system use at the time of relocation, not match the total capacity of the FS system.

(2) *Reliability.* System reliability is the degree to which information is transferred accurately within a system. FSS licensees must provide FS licensees with reliability equal to the overall reliability of their system. For digital data systems, reliability is measured by the percent of time the bit error rate (BER) exceeds a desired value, and for analog or digital voice transmissions, it is measured by the percent of time that audio signal qual-

ity meets an established threshold. If an analog voice system is replaced with a digital voice system, only the resulting frequency response, harmonic distortion, signal-to-noise ratio and its reliability will be considered in determining comparable reliability.

(3) *Operating costs.* Operating costs are the cost to operate and maintain the FS system. FSS licensees must compensate FS licensees for any increased recurring costs associated with the replacement facilities (e.g., additional rental payments, increased utility fees) for five years after relocation. FSS licensees may satisfy this obligation by making a lump-sum payment based on present value using current interest rates. Additionally, the maintenance costs to the FS licensee must be equivalent to the 18 GHz system in order for the replacement system to be considered comparable.

§ 101.91 Involuntary relocation procedures.

(a) If no agreement is reached during the negotiations period, an FSS licensee may initiate relocation procedures under the Commission's rules. FSS licensees are obligated to pay to relocate only the specific microwave links from which their systems may receive interference. Under these procedures, the FS licensee is required to relocate, provided that the FSS licensee:

(1) Guarantees payment of relocation costs, including all engineering, equipment, site and FCC fees, as well as any legitimate and prudent transaction expenses incurred by the FS licensee that are directly attributable to the relocation, subject to a cap of two percent of the hard costs involved. Hard costs are defined as the actual costs associated with providing a replacement system, such as equipment and engineering expenses. FSS licensees are not required to pay FS licensees for internal resources devoted to the relocation process. FSS licensees are not required to pay for transaction costs incurred by FS licensees during the negotiations once the negotiation is initiated, or for fees that cannot be legitimately tied to the provision of comparable facilities;

(2) Completes all activities necessary for implementing the replacement facilities, including engineering and cost

§ 101.95

47 CFR Ch. I (10–1–03 Edition)

analysis of the relocation procedure and, if radio facilities are used, identifying and obtaining, on the incumbents' behalf, new microwave frequencies and frequency coordination; and

(3) Builds the replacement system and tests it for comparability with the existing 18 GHz system.

(b) *Comparable facilities.* The replacement system provided to an incumbent during a relocation must be at least equivalent to the existing FS system with respect to the following three factors:

(1) *Throughput.* Communications throughput is the amount of information transferred within a system in a given amount of time. If analog facilities are being replaced with analog, the FSS licensee is required to provide the FS licensee with an equivalent number of 4 kHz voice channels. If digital facilities are being replaced with digital, the FSS licensee must provide the FS licensee with equivalent data loading bits per second (bps). FSS licensees must provide FS licensees with enough throughput to satisfy the FS licensee's system use at the time of relocation, not match the total capacity of the FS system.

(2) *Reliability.* System reliability is the degree to which information is transferred accurately within a system. FSS licensees must provide FS licensees with reliability equal to the overall reliability of their system. For digital data systems, reliability is measured by the percent of time the bit error rate (BER) exceeds a desired value, and for analog or digital voice transmissions, it is measured by the percent of time that audio signal quality meets an established threshold. If an analog voice system is replaced with a digital voice system, only the resulting frequency response, harmonic distortion, signal-to-noise ratio and its reliability will be considered in determining comparable reliability.

(3) *Operating costs.* Operating costs are the cost to operate and maintain the FS system. FSS licensees must compensate FS licensees for any increased recurring costs associated with the replacement facilities (e.g., additional rental payments, increased utility fees) for five years after relocation.

FSS licensees may satisfy this obligation by making a lump-sum payment based on present value using current interest rates. Additionally, the maintenance costs to the FS licensee must be equivalent to the 18 GHz system in order for the replacement system to be considered comparable.

(c) The FS licensee is not required to relocate until the alternative facilities are available to it for a reasonable time to make adjustments, determine comparability, and ensure a seamless handoff. The FS licensee may take up to 12 months to make such adjustments and perform such testing.

(d) If the FS licensee demonstrates to the Commission that the new facilities are not comparable to the former facilities, the Commission may require the FSS licensee to further modify or replace the FS licensee's equipment.

[65 FR 54173, Sept. 7, 2000, as amended at 66 FR 63516, Dec. 7, 2001]

§ 101.95 Sunset provisions for licensees in the 18.30–19.30 GHz band.

(a) FSS licensees are not required to pay relocation costs after the relocation rules sunset (see §§ 74.502(c), 74.602(g), and 78.18(a)(4) of this chapter, and § 101.147 (a) and (r)). Once the relocation rules sunset, an FSS licensee may require the incumbent to cease operations, provided that the FSS licensee intends to turn on a system within interference range of the incumbent, as determined by TIA Bulletin 10-F or any standard successor. FSS licensee notification to the affected FS licensee must be in writing and must provide the incumbent with no less than six months to vacate the spectrum. After the six-month notice period has expired, the FS licensee must turn its license back into the Commission, unless the parties have entered into an agreement which allows the FS licensee to continue to operate on a mutually agreed upon basis.

(b) If the parties cannot agree on a schedule or an alternative arrangement, requests for extension will be accepted and reviewed on a case-by-case basis. The Commission will grant such extensions only if the incumbent can demonstrate that: